

**Notice of Allowability**

Application No.

10/552,621

Examiner

Edward R. Cosimano

Applicant(s)

CHARLTON, ADRIAN

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 06 December 2006 and the examiner's amendment of 21 March 2007.
2. ☒ The allowed claim(s) is/are 1-20.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                                 |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.  |

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1. The Oath/Declaration and Abstract as originally filed are acceptable to the examiner.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
3. The sheets of drawings filed on 07 October 2005 containing figures 1 & 2 are acceptable to the examiner.

4. SUBSTANCE OF INTERVIEW

4.1 On 09 March 2007, the Examiner contacted Representative Slobasky regarding a question about an "analytical specification" as recited in claim 21 that had occurred upon further review and consideration of the pending claims.

4.1.1 The examiner, during an investigation of the meaning of this term to one of ordinary skill in the art at the time the invention was made, came across a reference to Schmitt (DE 39934969 A1) that appears to anticipate claim 21. In view of this newly discovered prior art and the following rejection of claim 21 was proposed to Representative Slobasky.

4.1.2 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.1.2.1 Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Schmitt (DE 39934969 A1).

4.1.2.2 To understand that the markings of Smitt ('969) would be recognized by one of ordinary skill at the time the invention was made as being equivalent to the claimed "analytical specification", then we must first determine what applicant means by the phrase "analytical specification. In regard to applicant's definition, it is noted that applicant has defined an "analytical specification as being indicative of the complete chemical composition of a product, see the paragraphs located between page 4, lines 23, and page 5, line 20;

"Malting this ... the package. The reference data represents at least an analytical specification of a predetermined desired composition of the product, recorded in direct association with the packaging at the point of packaging, and

against which the subsequently measured analytical specification can be compared.

It is ... provided.

The key to the invention is that what is recorded at the marking phase comprises a substantially full analytical specification, which is then recorded on the packaging in a manner which enables it to be reconstructed at the authentication phase. The analytical specification does not merely constitute selected data points relating for example to characteristic peaks in an analysis. Rather, an analytical technique is used which obtains varying intensity data across a spectrum or other range, with the intensity distribution across the spectrum or range being characteristic of the chemical composition of the product. In accordance with the invention, reference is made to the recordal of such an analytical specification, by which is meant a recordal of distributed intensity data across the range, rather than merely a recordal of data about the presence of particular characteristic peaks or the like.

In view of applicant's definition of an "analytical specification", it is noted that for one of ordinary skill at the time the invention was made to recognize an listing of the composition of a product to be equivalent to the claimed "analytical specification of a product", then the listing of must contain enough information about the product to uniquely identify the product by the chemical composition of the product,

4.1.2.3 As a further note, it is noted that the content, fat vitamin, mineral, etc. information as required by the USDA to be placed on the labels of food products, would not be interpreted by one of ordinary skill at the time the invention was made as being either: (A) an "analytical specification" with in the meaning of applicant's definition of an "analytical specification"; or (B) equivalent to an "analytical specification" with in the meaning of applicant's definition of an "analytical specification", because it does not uniquely identify the chemical composition of the product.

4.1.2.4 Now in regard to claim 21, Schmitt ('969) in the abstract clearly discloses that a manufactured product or the container of a manufacture product is marked with machine readable coded reference markings that indicate the chemical composition of the manufacture

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product, and that the machine readable marking on the product are then used to identify the contents of the product for the purposes of subsequent processing.

4.1.2.5 It is further noted that if the product of Smitt ('969) has not been corrupted or diluted or mixed with anything else, than the markings of Smitt ('969) would also be a method of authentication the product or determining the quality of the product.

4.1.3 After some consideration, Representative Scherer on 21 March 2007, it was agreed to cancel claim 21 by examiner's amendment.

5. EXAMINER'S AMENDMENT

5.1 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

In the claims:

Cancel claim 21.

5.1.1 Authorization for this examiner's amendment was given in a telephone interview with representatives Slobasky and Scherer that was conducted on 09 March 2007 and 21 March 2007.

6. The following is a statement of reasons for the indication of allowable subject matter:

A) the prior art, for example:

(1) either Pelavin (2,960,910) or Martens et al (3,428,796) or Varnela (3,547,541) disclose a process/machine in which a substance is exposed to a source of light and a measurement of the amount of light that has been (a) absorbed in Pelavin (2,960,910); or (b) transmitted through the substance as a measure of the reflectance/absorbance of the substance in Martens et al (3,428,796); or (c) reflected/absorbed by the substance at various frequencies in Varnela (3,547,541), is used in order to determine and indicate the quantity of the various constituents of the substance.

(2) Markant et al (3,537,820) discloses a process/machine in which properties of a substance are measured and correlated to determine the various constituents of the substance.

(3) Adler et al (DE 4436923 C1) discloses a process/machine in which a spectrum analysis of a substance is used to generate a barcode that is applied to the container of the substance by the manufacturer. Once the container of the substance has reached its destination the bar code is checked in order to determine if there has been tampering with either the container or the substance.

(4) Millot et al (FR 2787220 A1) discloses a process in which a smart electronic tag that has been applied to the item/substance or the container of the item/substance is used to store data/information about the associated item/substance.

(5) either Alocilja et al (2002/0119513 or 6,767,732) discloses a machine/process in which the volatile products contained in a sample are detected and identified by using a sensor to produce a signature and a spectrophotometer to produce a spectral footprint, and then comparing the obtained signature and spectral footprint to previously stored data/information that uniquely identifies various products.

(6) Muehl et al (2004/0024570) discloses a machine/process in which tag that has been attached to an item is used to store data/information about the associated item where the stored data/information may be retrieved and updated as necessary.

B) however, the prior art does not fairly teach or suggest in regard to claims 1-20 a process in claim 1 and a machine in claim 18 that provides the useful and beneficial function of “identifying packaged products” or “authenticating packaged products” or “determining the quality of a packaged products” by providing structures in claims 18-20 and actions in claims 1-17 that perform the following functions:

(1) marking a packaged product with a machine readable storage device that stores data/information regarding the chemical composition/specification of the packaged product that has been converted into machine readable data; and

(2) “authenticating” or “identifying” or “determining the quality” of the packaged product at a subsequent time by determining if a chemical analysis of a sample of the packaged product has produced results that are within

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predetermined tolerances limits of the chemical composition/specification of the packaged product that has been read from the machine readable storage device used to mark the packaged product.

Claims 2-17, which depend from claim 1, and claims 19 & 20, which depend from claim 18, are allowable for the same reason.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern time).

7.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC  
03/21/2007



**Edward Cosimano**  
**Primary Examiner**